

In the Matter of Daniel Donnerstag, Firefighter (M2549M), Millburn, Firefighter (M2555M), North Hudson, Firefighter (M2573M), Union Township, and Firefighter (M2586M), Hillside

CSC Docket No. 2013-86

(Civil Service Commission, decided February 16, 2011)

Daniel Donnerstag appeals the denial of disabled veterans' preference for the Firefighter (M2549M), Millburn, Firefighter (M2555M), North Hudson, Firefighter (M2573M), Union Township, and Firefighter (M2586M), Hillside, open competitive examinations.

The eligible lists for the subject examinations were issued on December 13, 2011. The record indicates that appellant was ranked as a non-veteran on the subject eligible lists.

At the outset, it is noted that effective March 1, 2001, Chapter 127 of Public Law 2000 was enacted which provides that the Department of Military and Veterans Affairs (DMAVA) shall determine the status of veterans in certain cases, including civil service veterans' preference. In this regard, the Civil Service Commission (Commission) no longer reviews requests to establish veterans' preference for civil service testing. Rather, once it makes a determination, DMAVA causes the appropriate coding for approved veterans or disabled veterans preference to be entered into the Commission's database. The date this occurs establishes the date of the Adjutant General's initial determination for veterans or disabled veterans' preference. *See N.J.A.C. 5A:9*. In this case, DMAVA determined that Mr. Donnerstag was entitled to disabled veterans preference for civil service testing effective May 24, 2012. Therefore, the only issue to be reviewed in this proceeding is whether Mr. Donnerstag submitted the required documents for establishment of his entitlement to disabled veterans preference for the subject examinations eight days prior to the list issuance for the subject examinations, as required by statute.

On appeal, Mr. Donnerstag argues that he meets the requirements for veteran status for the subject examinations. He submits copies of a Marine Corps Total Force System Basic Individual Record, an Admission Data form from the National Naval Medical Center, a Notification of Eligibility for the subject examinations, and a Notification of Veterans Status dated May 25, 2012. Appellant argues that he met the criteria for veterans' preference after a deployment to Iraq in 2008 with the exception of being discharged from service. He states that he took the written test for Firefighter in October 2010 and his End of Active Service (EAS) discharge date was set for August 31, 2011. However, he was deployed to Afghanistan and suffered multiple injuries on April 4, 2011. Consequently, his EAS was moved to July 3, 2012 to allow for multiple surgeries and time for rehabilitation. He states that, after calling the Commission and providing the correct documentation, he was allowed an extension for the physical examination

after many months of physical therapy and he completed the physical examination on May 31, 2012. Prior to the physical examination, he filed his DD-214 with the Commission. He argues that he received the Notification of Veterans Status dated May 25, 2012 prior to his name being added to the current subject eligible lists. However, he received the Notification of Eligibility for the subject examinations with a status of non-veteran on June 28, 2012. He also argues that, if he had not been injured in Afghanistan, his EAS would have remained August 31, 2011, and he would have qualified for veterans' preference prior to the December 13, 2011, issuance of the current subject eligible lists. He refers to the Notification of Veterans Status dated May 25, 2012 which indicates "You will receive this status on all future N. J. Civil Service Commission examinations..." and argues that, after taking the physical examination on May 31, 2012, he did not receive the "justified" status. Therefore, he requests that his status be revised as a disabled veteran out of respect and honor as a two-time combat veteran and a Purple Heart recipient.

CONCLUSION

N.J.S.A. 11A:5-1 provides that veterans may establish veteran status eight days prior to list issuance. *N.J.S.A.* 11A:5-1.1 specifies, in pertinent part:

The determination of the Adjutant General [for veterans or disabled veterans preference] shall apply only prospectively from the date of initial determination or date of determination from an appeal as appropriate, and *shall be binding on the Commission* [emphasis added].

N.J.A.C. 4A:5-1.3 provides that:

(a) Veterans or disabled veterans preference shall apply prospectively from the date of the initial determination of the Adjutant General of the Department of Military and Veterans' Affairs or the date of the Adjutant General's determination from an appeal, as the case may be. See *N.J.A.C.* 5A:9-1.4.

(b) Veterans or disabled veterans' preference is effective for all eligible lists for which an eligible has received a determination from the Adjutant General, as provided in (a) above, no later than eight days prior to the list's issuance date.

A thorough review of all material presented clearly demonstrates that Mr. Donnerstag failed to meet the requirements for veteran status for the subject examinations. In order for veteran status to be applied for the subject examinations, it must have been established eight days prior to December 13, 2011, the issue date of the eligible lists.

Prior to amending *N.J.S.A.* 11A:5-1 in 2007 to permit the awarding of veterans preference no later than eight days prior to the issuance of an eligible list, candidates were required to establish veterans preference on or before the closing date of an examination. In amending *N.J.S.A.* 11A:5-1, it was determined that pushing back the deadline for establishment of the preference would provide a window of opportunity to attain veterans preference for those individuals serving in conflicts that would qualify them for the preference. However, providing this expanded window of opportunity to establish preference had to be counterbalanced with the expectations of appointing authorities to be able to rely on issued eligible lists when considering eligibles for appointment. Thus, permitting eligibles to establish the preference eight days prior to the issuance of eligible lists expanded the window of opportunity for veterans to be able to enjoy the benefits of that preference for examinations, but also ensured that appointing authorities would be able to rely on the issued lists, without the lists continuously being updated with changed rankings of eligibles who established veterans' preference after a list was issued.

Although appellant argues that he received the Notification of Eligibility for the subject examinations with a status of non-veteran on June 28, 2012, this was not the issue date of the subject lists. His name was merely added to the existing eligible lists at that time. In addition, appellant acknowledges that the eligible lists were issued on December 13, 2011, stating that, if he had not been injured in Afghanistan, his EAS would have remained August 31, 2011, and he would have qualified for veterans' preference prior to the December 13, 2011. However, notwithstanding the fact that his EAS date was moved to July 3, 2012, the appellant did not establish his veterans' preference through DMAVA until May 24, 2012. As previously noted, *N.J.S.A.* 11A:5-1.1 mandates that the determination of the Adjutant General for veterans or disabled veterans' preference shall apply only *prospectively from the date of initial determination and shall be binding on the Commission*. Accordingly, Mr. Donnerstag cannot receive veteran status for eligible lists that were issued more than five months prior to the establishment of his disabled veterans' preference. Therefore, the Division of Selection Services properly determined that Mr. Donnerstag was a non-veteran for the subject examinations since he did not establish veteran status eight days prior to the issuance of the subject eligible lists.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.